

## Members of Parliament (Staff) Act: Background

This Research Note describes the operation of the *Members of Parliament (Staff) Act 1984* ([the MoPS Act](#)), and should be read in conjunction with the parallel Research Notes on [employment issues](#) and [accountability issues](#).

The MoPS Act governs the employment of some 1400 staff (MoPS staff) by members, senators and ministers. The Act provided the first systematic structure under which such staff could be employed. Prior to 1984, the only framework was Section 48A of the *Public Service Act 1922* (introduced in 1930), which allowed for secondment of public servants as private secretaries to ministers and the Leader of the Opposition in both Houses. This reflected the fact that staffers were not (and are not) necessarily partisan; they were often employed to bring specialist or professional expertise to bear on policy issues and as such were often seconded from Departments of State.<sup>1</sup>

As outlined in the [Research Note on MoPS Act accountability issues](#), the Act was introduced partly in response to recommendations of the Royal Commission into Australian Government Administration (RCAGA) in the late 1970s.

### The 1984 MoPS Act

This section describes the original form of the Act; the next section describes how it changed in 1999.

The MoPS Act had three main parts, governing employment of ministerial consultants (Part II), staff of office-holders (Part III), and staff of senators and members (Part IV).

Office-holders include ministers, parliamentary secretaries, party leaders in both Houses, whips and the Speaker and President. Consultants were used extensively by the Hawke and Keating governments but are now seldom employed and this Note does not discuss them in detail.<sup>2</sup>

Under the MoPS Act, Senators and Members (whether office-holders or not) employed staff directly, but only 'in accordance with arrangements approved by the Prime Minister' (ss. [13](#), [20](#)). MoPS staff were to have conditions of employment ostensibly similar to those of a public servant. To achieve this the MoPS Act described a staffer's employment in terms of an equivalent level of the Public Service (APS) (ss. [14](#), [21](#)). Unlike APS conditions of employment, however, conditions of employment under the MoPS Act could be varied in any way by the Prime Minister (ss. 14, 21).

Employment ceased if the staffer's employer died or lost office, and a MoPS staffer could also have their employment terminated at any time (ss. [16](#), [23](#)).

It can be seen, therefore, that employment arrangements under the 1984 MoPS Act were very flexible. They also gave the Prime Minister considerable control over conditions of employment. This control has operated, however, within the constraints of industrial laws, awards and certified agreements.

The flexibility in the MoPS Act is no accident. It reflects the volatile and partisan nature of political office. It would seem inappropriate to have

staff with greater security of tenure than the individuals whom they were employed to serve. It also reflects the demands of loyalty to the agenda of the employing party.

### The 1999 Reforms

In 1999, the link between APS classifications and any employment arrangements made under the MoPS Act was removed from legislation.<sup>3</sup> Whereas the 1984 Act had conferred on the Public Service Board a role in managing the transition of staff between MoPS Act service and the APS, the 1999 reforms gave no role to the Public Service Commissioner. One effect of this is that public servants who are on leave without pay while working as MoPS staff can no longer seek a review of the substantive level they hold in the APS. Thus, although they may return to the APS, their right of return is only to the level they departed, regardless of the skills and experience they have gained during their time working in Parliament.

Before 1999, [s. 25](#) of the MoPS Act gave public servants a right to be on leave without pay indefinitely while working as MoPS staff, and thus a right to return to the APS. In 1999 this section was repealed.<sup>4</sup> Transitional arrangements were enacted for public servants working as MoPS staff at that time.<sup>5</sup> For new staff the same right exists, created by the Prime Minister's [Public Service Directions](#), which are issued under s. 21 of the *Public Service Act 1999*.<sup>6</sup> Those *Directions* require agency heads to grant leave without pay to APS employees working under sections 13 or 20 of the MoPS Act.

While the *Directions* currently ensure that public servants retain mobility between MoPS service and the APS, the *Directions* are not disallowable instruments, limiting parliamentary control of any changes.

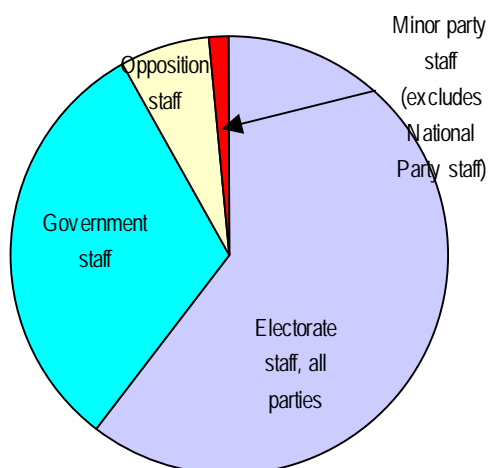
One other effect of the 1999 reforms is that public servants engaged as *consultants* on contracts of employment under MoPS can no longer be assured that they will be granted leave without pay from the APS. This is because the *Directions* do not require agency heads to grant leave without pay to APS employees appointed to a position under s.4 of the MoPS Act, the section under which consultants are employed.

### The operation of MoPS

The [Special Minister of State](#) administers MoPS Act management responsibilities under Prime Ministerial authorisation. The Ministerial and Parliamentary Services Group of the Department of Finance and Administration provides administrative support and policy advice on MoPS.

Figure 1 shows the make-up of staff employed under the MoPS Act.<sup>7</sup>

Figure 1. Composition of MoPS staff



Most are electorate staff, the majority of whom work in MPs' offices around the country. The number of individuals employed is greater than the number of full-time positions as many electorate officer positions are job-shared by part-time staff. The number of opposition staff is

determined as a proportion (21 per cent) of government staff.

MoPS staff are employed under either a certified agreement, or Australian Workplace Agreements.

MoPS staff are employed directly by Members, Senators and office-holders, and rules have been put in place to guide the appointment process. These rules are based on ss.12, 13(2) and 20(2) of the MoPS Act, which allow the Prime Minister to make determinations with respect to:

- who is designated to be an office-holder, and therefore able to appoint staff under Part III of the Act, and
- the conditions under which MPs may exercise the power to employ staff.

The rules determining the number of electorate staff an MP may have and the levels at which they may be appointed are examples of Prime Ministerial determinations that have been made under the Act. Currently MPs are funded to employ three electorate staff, and a fourth if they have a second electorate office,

which is the case for the largest House of Representatives electorates. In 2001 these were: Grey (SA), Kalgoorlie (WA), Kennedy (Qld), Leichardt (Qld), Lingiari (NT), Maranoa (Qld), and Parkes (NSW).<sup>8</sup>

Similar determinations under the Act require that at least two of the three electorate staff work in the electorate office rather than in Canberra.

In addition to determinations made under the Act, political parties or the government may also have their own policies regarding employment. Thus some governments have had a policy whereby Ministers could not employ their own relatives, or the relatives of

other Ministers. This restriction is not, however, embedded in legislation.

MoPS staff may work long and irregular hours. As a result, they receive allowances. Staff employed under Part III of the MoPS Act receive larger allowances (Parliamentary Staff Allowance or Ministerial Staff Allowance) than those employed under Part IV, who may receive the Electorate Staff Allowance. The level of allowance is also discussed in the Research Note on employment issues.

### Endnotes

1. M. Roberts, *Ministerial Advisers: A Background Paper*, Research Paper no. 6, RCAGA, 1974–6.
2. The numbers of consultants employed is outlined in the [Research Paper on ministerial staff](#).
3. Changes discussed here are in the *Public Employment (Consequential and Transitional) Amendment (PECTA) Act 1999*, [Sched. 1](#).
4. By clause 605 of the PECTA Act, [Sched. 1](#).
5. PECTA Act, ss. [6](#), [7](#).
6. Commonwealth Special Gazette no. S 584, 4 December 1999.
7. Former Prime Ministers are also allowed to employ a small number of MoPS staff. They are excluded from this figure.
8. Senate Finance and Public Administration Committee, *Estimates 2001–02, Additional Information Received*, vol. 2, September 2001.

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